

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GINA GROSS-RUBIO,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

Case No. 2:12-cv-01281-APG-GWF

ORDER

**Motion for De Novo Review or in
the Alternative to Allow Plaintiff
to Conduct Discovery - #29**

This matter is before the Court on Plaintiff's Motion for De Novo Review or in the Alternative to Allow Plaintiff to Conduct Discovery and Supplement the Record (#29), filed on May 12, 2014. The Defendant filed its Opposition to Plaintiff's Motion (#32) on May 30, 2014. The Court conducted a hearing in this matter on July 9, 2014.

BACKGROUND AND DISCUSSION

This case involves a claim for damages and equitable relief arising out of Defendant's alleged wrongful denial of disability payments under an employee benefit plan administered by Defendant Metlife, and which is governed by the Employment Retirement Income Security Act of 1974 as amended, 29 U.S.C. § 1001, et. seq. ("ERISA"). In regard to Plaintiff's request to conduct discovery in this case, the undersigned has determined that judicial review of the denial of Plaintiff's claim for disability benefits is governed by an abuse of discretion standard. *See Abatie v. Alta Health & Life Insurance Co.*, 458 F.3d 955 (9th Cir. 2006). The undersigned also finds no evidence that Defendant flagrantly violated the procedural requirements in investigating and adjudicating the Plaintiff's claim such that the court should conduct *de novo* review of Metlife's denial. *See Abatie*, 458 F.3d at 971-72. Judicial review under an abuse of discretion standard is

1 based on the record before the administrator. Discovery is generally unnecessary where the court's
2 decision is limited to the administrative record.

3 It is undisputed that Metlife has an apparent or structural conflict of interest because it both
4 administers and funds the payment of benefits under the plan. The court may consider this conflict
5 of interest in determining whether the administrator abused its discretion in denying a claim for
6 benefits. *Abatie*, 458 F.3d at 968. The court may also authorize limited discovery regarding the
7 administrator's conflict of interest even where review is conducted pursuant to an abuse of
8 discretion standard. Specifically, where the administrator has retained a physician to review the
9 claimant's medical condition and provide an opinion whether the claimant is disabled, courts have
10 allowed the plaintiff to conduct discovery regarding the financial relationship between the
11 reviewing physician and the administrator. *See Frost v. Metropolitan Life Ins. Co.*, 414 F.Supp.2d
12 961, 964-65 (C.D.Cal. 2006). Evidence derived from such discovery may be considered by the
13 court in determining whether plan administrator's conflict of interest improperly influenced its
14 decision.

15 Metlife retained Dr. John D. Thomas II to provide a medical opinion regarding Plaintiff's
16 alleged disability. Dr. Thomas reviewed Plaintiff's medical records and attempted to speak with
17 her physician, but was not able to make contact with him. Dr. Thomas provided a medical opinion
18 that Plaintiff's medical condition limited her to performing sedentary work with certain additional
19 limitations. He also opined that subject to these limitations, she was able to work full time at her
20 previous position. Metlife allegedly relied on Dr. Thomas's opinion in determining that Plaintiff
21 was not entitled to disability benefits. Plaintiff desires to conduct discovery regarding Dr.
22 Thomas's financial relationship with Metlife. Defendant argues that such discovery should not be
23 permitted because Dr. Thomas's opinion was consistent with other substantial evidence in the
24 record and there is no basis to believe that his opinion was influenced by his possible financial
25 relationship with Metlife or that Metlife's decision was a product of its alleged conflict of interest.
26 Defendant also argues that the amount of benefits in controversy does not justify the burden and
27 expense of such discovery.

28 . . .

1 The Court finds that discovery limited to what percentage of Dr. Thomas's medical practice
2 and income is derived from providing medical reviews for Metlife is relevant to the issue of
3 Metlife's conflict of interest.¹ There is no evidence presently before the court that such discovery
4 will be unduly burdensome or expensive. The Court is informed that Metlife contracts with a
5 medical review service company that in turn contracts with physicians such as Dr. Thomas to
6 perform medical reviews. Dr. Thomas should be able to provide information as to what percentage
7 of his work and income is derived from performing medical reviews, including medical reviews for
8 the company that employed his services in this case. The medical review service company should
9 be able to provide information regarding what percentage of Dr. Thomas's reviews involve claims
10 administered by Metlife. The parties' counsel should meet and confer as to the most reasonable
11 and least burdensome means to obtain the authorized discovery, whether through interrogatories,
12 requests for production of documents, or deposition. Accordingly,

13 **IT IS HEREBY ORDERED** that Plaintiff's Motion for De Novo Review or in the
14 Alternative to Allow Plaintiff to Conduct Discovery and Supplement the Record (#29) is **granted**,
15 in part, in accordance with the foregoing provisions of this order.

16 **IT IS FURTHER ORDERED** that discovery shall be completed within sixty (60) days
17 from the date of this order, unless the time is hereafter extended by order of the court on stipulation
18 of the parties or pursuant to motion. The parties shall also submit a briefing schedule for a trial
19 based on the administrative record.

20 DATED this 18th day of July, 2014.

21
22 
23 GEORGE FOLEY, JR.
24 United States Magistrate Judge
25
26

27 ¹ Plaintiff is not otherwise authorized to conduct discovery relating to the reasonableness or
28 basis for Dr. Thomas's medical opinions.